

Remarks

In the Final Office Action dated January 21, 2010, the following grounds of rejection are presented: claims 1-8 and 10-16 stand rejected under 35 U.S.C. § 102(e) over Joseph (U.S. Patent No. 6,993,645); claim 9 stands rejected under 35 U.S.C. § 103(a) over the '645 reference in view of Perlman (U.S. Patent No. 7,200,859). Applicant traverses all of the rejections and, unless explicitly stated by the Applicant, does not acquiesce to any objection, rejection or averment made in the Office Action.

Applicant submits that the rejections under 35 U.S.C. §§ 102(e) and 103(a) rely upon the mistaken assumption that certain aspects are "in parallel" simply because they might be implemented at close to the same time. M.P.E.P. § 2131 explains that "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." Citing to *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631 (Fed. Cir.1987). The cited Col. 2, lines 4-7 does not expressly, implicitly or inherently teach that such aspects are implemented in parallel. Instead the cited lines expressly state that (emphasis added) "(t)he POST phase is interrupted long enough to retrieve and display content to a user." As the POST phase is interrupted and therefore not implemented in parallel, this would strongly suggest that the Examiner is improperly interpreting the teachings of the '645 reference. Where the express teachings contradict the basis for the rejection, the rejection cannot stand.

Moreover, the Examiner appears to allege improperly that any type of data access corresponds to a download. As explained in M.P.E.P. § 2111.01, which provides the standard for interpreting claim limitations: "This means that the words of the claim must be given their plain meaning unless the plain meaning is inconsistent with the specification." Citing to *In re Zletz*, 893 F.2d 319, 321 (Fed. Cir. 1989); *Chef America, Inc. v. Lamb-Weston, Inc.*, 358 F.3d 1371, 1372 (Fed. Cir. 2004). The plain meaning of the term download (used consistently within Applicant's specification) is "to transfer (software, data, character sets, etc.) from a distant to a nearby computer, from a larger to a smaller computer, or from a computer to a peripheral device." download.

Dictionary.com. *Dictionary.com Unabridged*. Random House, Inc.

<http://dictionary.reference.com/browse/download> (accessed: February 15, 2010). Thus,

accessing a local ROM would not be “downloading” nor would it be downloading or accessing from a “third-party device.” The Examiner’s attempt to read the teachings of the ‘645 reference is contrary to the plain meaning and to the express limitations of the claims. Accordingly, the rejection is improper and should be withdrawn.

The Examiner has also failed to show how the ‘645 reference teaches a receive module for receiving, from a third-party device, multimedia content via said network, where the module is implemented in parallel with a boot module. The identified content is taught to be accessed from a local flash ROM; however, such a ROM would not be considered a third-party device under a reasonable interpretation. Applicant respectfully submits that no explanation or evidence is provided to explain why the skilled artisan would depart from the common sense and plain meaning of the term “third party-device” in a manner that would somehow include a local flash ROM.

Moreover, there is not a receive module that (in parallel with the boot module) accesses data from this flash ROM via the identified network interface 26. Indeed, using a network interface to access an internal ROM used during the POST phase is illogical and likely not possible.

With particular regards to claim 5, the ‘645 reference does not teach parallel implementation of booting and of receiving multimedia content from a third-party via a network. In particular, Network interface 26 is not taught to be used to access the alleged multimedia content in parallel to booting the device, which is located on an internal ROM. The Examiner has chosen not to address this deficiency in the Final Office Action.

With regards to claim 2, the ‘645 reference’s teaching regarding accesses to an internal ROM have no apparent correspondence to the limitations of claim 2. For instance, there is no apparent correspondence to a second request for use with Common Gateway Interface (CGI) script. Nor is there any clearly articulated explanation for how or why the skilled artisan would interpret the plain meaning of a CGI script to correspond to access to an internal ROM.

The above-mentioned deficiencies are further illustrated by the Office Action’s attempts at showing correspondence to various dependent claim limitations. Applicant

does not address each of these additional deficiencies in detail but notes that various aspects of the cited references have not been shown to occur in parallel with booting.

Applicant respectfully traverses the rejection under 35 U.S.C. § 103(a) for lack of correspondence. The rejection is improper for the reasons presented above in connection with the rejection under 35 U.S.C. § 102(e) and the modification in view of the '859 reference does not cure this deficiency. Applicant respectfully requests that the rejection be withdrawn.

In view of the remarks above, Applicant believes that each of the rejections/objections has been overcome and the application is in condition for allowance. Should there be any remaining issues that could be readily addressed over the telephone, the Examiner is asked to contact the agent overseeing the application file, David Schaeffer of NXP Corporation at (212) 876-6170.

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